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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DomainTools, LLC

Plaintiff,

v.

Russ Smith, *pro se*
and Consumer.net LLC

Defendants

Civil Action No.
2-12-Cv-00498-MJP

Document Electronically Filed

Defendant Russ Smith's
Third Motion to Dismiss -
Amended

Returnable August 3, 2012

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Summary

1. On August 3, 2012 in the US District Court defendant Russ Smith seeks an order to dismiss this case pursuant to Fed R. Civ P 7.1 for failure to file a valid corporate disclosure statement. Russ Smith is an individual living in New Jersey and requests that any appearance be done via teleconference.¹

¹In the interest of fairness defendant Russ Smith requests the court require all parties to appear via teleconference.

2. This Motion amends the previous Third Motion to Dismiss by Defendant Russ Smith. This motion is being amended because it has come to light that Domain Tools is now claiming three different corporate structures which are all different:
 - a. One reported to the US Patent and Trademark Office (USPTO),
 - b. A different structure reported on their web site, and
 - c. A third structure reported to the court in the corporate disclosure statements.^{2, 3}

Domain Tools' Corporate Structure as Reported to the USPTO

3. Euro Convergence S.A.R.L. filed a "Declaration of Susan Prosser" with the USPTO office as part of the application for the "DOMAIN TOOLS" trademark Reg. No. 4079040 (Exhibit A-3) which states that:
 - a. Susan Prosser is an employee of Domain Tools (Paragraph 3),
 - b. The applicant (Euro Convergent SARL) has exclusively used the "DOMAINTOOLS" text and logo over the past 5 years (Paragraph 8),

²Since the original Third Motion to Dismiss (Document 31) was filed a Motion for Sanctions (Document 33) has been filed by Russ Smith. The Motion for Sanctions includes the issues of the invalid corporate disclosure filing as one of the issues.

³A similar discrepancy exists concerning the entity that publishes the images at <http://Screenshots.com>. Domain Tools claims they publish the images on the web site (Complaint at 22) while Euro Convergence S.A.R.L. Claims they publish those images (Exhibit A-2 filed with the Motion for Sanctions, Document 35).

- c. Domain Tools is a wholly owned subsidiary of Domain Tools Holdings, S.A.R.L. (Paragraph 2), and
 - d. Domain Tools Holdings, S.A.R.L. Is a subsidiary of EuroConvergence S.A.R.L. (Paragraph 2).
4. By definition, the parent of a "subsidiary" must hold more than 50% ownership.⁴ Therefore, Euro Convergence S.A.R.L. owns more than 50% of Domain Tools Holdings, S.A.R.L.
5. Since Domain Tools Holdings, S.A.R.L. Owns 100% of Domain Tools then Euro Convergence S.A.R.L. owns more than 50% of Domain Tools and should have been listed on the corporate disclosure statement filed with the Court.

Domain Tools' Corporate Structure as Reported to the Public

6. Domain Tools posts at their web site (Exhibit A-13):

We just got an outdoor sign installed on our building in Los Angeles. For those of you that missed the announcement Thought Convergence is the new parent company of Name Intelligence/DomainTools.com

7. The Thought Convergence web site confirms this at their web site (Exhibit A-14):

Divisions of Thought Convergence, Inc.:

- TrafficZ (#TrafficZ)
- AfterMarket.com (#AfterMarket.com)
- DomainTools (#DomainTools)

⁴Subsidiary corporation: One in which another corporation (i.e., parent) owns at least a majority of the shares, and thus has control. Said of a company more than 50 percent of whose voting stock is owned by another." - Source: Black's Law Dictionary, Fifth Edition.

- **Domain Roundtable (#Domain Roundtable)**
- **LeaseThis.com (#LeaseThis.com)**
- **Idea.net (#Idea.net)**

Domain Tools' Corporate Structure as Reported to the Court

8. Initially Domain Tools filed a disclosure (Document 8) that claimed Domain Tools S.A.R.L. (which apparently does not exist) owns at least 10% of Domain Tools.
9. Russ Smith notified Domain Tools that the disclosure statement did not match the information in the Declaration of Susan Prosser filed with the USPTO. A second disclosure statement was then filed (Document 10) that claims only Domain Tools Holdings S.A.R.L owns at least 10% of Domain Tools. That second filing fails to mention Euro Convergence S.A.R.L. or Thought Convergence, Inc. Domain Tools refused additional requests to correct the filing resulting in this motion.

Relief Sought

10. The relief sought with this motion is:
 - a. Dismiss the case in its entirety with prejudice.



Russ Smith, *pro se*
July 12, 2012